

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAKE CHARLES DIVISION**

<b>ABDEL RAHIM MUHAMMAD # 53651-019</b>	<b>:</b>	<b>DOCKET NO. 15-cv-2161</b>
<b>VERSUS</b>	<b>:</b>	<b>JUDGE MINALDI</b>
<b>BECKY CLAY</b>	<b>:</b>	<b>MAGISTRATE JUDGE KAY</b>

**REPORT AND RECOMMENDATION**

Before the court is a petition for writ of *habeas corpus* filed pursuant to 28 U.S.C. § 2241 by *pro se* petitioner Abdel Rahim Muhammad (“Muhammad”). Muhammad is in the custody of the Federal Bureau of Prisons and is currently incarcerated at the Federal Correctional Institute in Oakdale, Louisiana.

This matter was referred to the undersigned for review, report, and recommendation in accordance with the provisions of 28 U.S.C. § 636 and the standing orders of the court. For the following reasons it is recommended that the petition be **DISMISSED WITH PREJUDICE**.

**I.  
BACKGROUND**

Muhammad was convicted on November 15, 2011, of bank robbery, use of a firearm during a crime of violence, and conspiracy to commit money laundering. *See United States v. Muhammad*, 2:09-cr-00371-01 (E.D. La. Feb. 29, 2012), doc. 158. He was then sentenced to 162 months imprisonment. *Id.* Following an unsuccessful appeal to the Fifth Circuit, Muhammad filed a 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence in the Eastern District of Louisiana. *Id.* at doc. 195. The motion was denied on November 17, 2014. *Id.* at docs. 201–02.

Muhammad filed the instant writ of *habeas corpus* pursuant to 28 U.S.C. § 2241 on August 7, 2015. Doc. 1. He claims violations of his Fourth Amendment protection against unreasonable search and seizure and his Sixth Amendment right to a fair trial. Doc. 1, p. 5. He also alleges that there was insufficient evidence to sustain his conviction. *Id.*

## **II. LAW AND ANALYSIS**

*Habeas corpus* petitions filed pursuant to 28 U.S.C. § 2241 are generally used to challenge the manner in which a sentence is executed. *See Warren v. Miles*, 230 F.3d 688, 694 (5th Cir. 2000). A motion to vacate sentence filed pursuant to 28 U.S.C. § 2255 allows federal inmates to collaterally attack the legality of their convictions or sentences. *Cox v. Warden, Fed. Det. Ctr.*, 911 F.2d 1111, 1113 (5th Cir. 1990). Here, Muhammad collaterally attacks his incarceration arguing errors with regard to his federal conviction and challenges the imposition rather than execution of his sentence. Therefore his claim should be advanced in a § 2255 Motion to Vacate.

Federal prisoners may use § 2241 to challenge the legality of their convictions or sentences but only if they satisfy the § 2255 “savings clause.” *Reyes-Requena v. United States*, 243 F.3d 893, 901 (5th Cir. 2001). The savings clause provides that a prisoner may file a writ of habeas corpus pursuant to § 2241 if the § 2255 motion’s remedy is “inadequate or ineffective to test the legality of his detention.” *See* 28 U.S.C. § 2255; *Jeffers v. Chandler*, 253 F.3d 827, 830 (5th Cir. 2001). The fact that a prior § 2255 motion was unsuccessful, or that the petitioner is unable to meet the statute’s second or successive requirement, does not make § 2255 inadequate or ineffective. *Id.*

A prisoner seeking such relief under the savings clause must establish that: (1) his claim is based on a retroactively applicable Supreme Court decision which establishes that he may have been convicted of a nonexistent offense, and that (2) his claim was foreclosed by circuit law at the

time when the claim should have been raised in his trial, appeal, or first § 2255 motion. *Reyes-Requena*, 243 F.3d at 904. Muhammad does not satisfy the criteria set forth above. He has pointed to no retroactively applicable Supreme Court decision which establishes that he was convicted of a nonexistent offense. Consequently, Muhammad is unable to carry his burden of proving that his § 2241 petition falls under the savings clause of § 2255, and he may not avail himself of § 2241 relief in this case. Therefore the instant petition must be dismissed for lack of jurisdiction.

### **III. CONCLUSION**


Accordingly,

**IT IS RECOMMENDED** that the petition for *habeas corpus* filed pursuant to 28 U.S.C. § 2241 be **DISMISSED WITH PREJUDICE** because the court lacks jurisdiction to consider these claims.

Under the provisions of 28 U.S.C. § 636(b)(1)(C) and Rule 72(b), parties aggrieved by this recommendation have fourteen (14) days from service of this report and recommendation to file specific, written objections with the Clerk of Court. A party may respond to another party's objections within fourteen (14) days after being served with a copy of any objections or response to the District Judge at the time of filing.

Failure to file written objections to the proposed factual findings and/or the proposed legal conclusions reflected in this Report and Recommendation within fourteen (14) days following the date of its service, or within the time frame authorized by Fed.R.Civ.P. 6(b), shall bar an aggrieved party from attacking either the factual findings or the legal conclusions accepted by the District Court, except upon grounds of plain error. *See Douglass v. United Services Automobile Association*, 79 F.3d 1415 (5th Cir. 1996).

THUS DONE this 8<sup>th</sup> day of February, 2016.



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KATHLEEN KAY  
UNITED STATES MAGISTRATE JUDGE